

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

MARY HILLS

W7799 County Road E
Spooner, WI 54801

Individually and on behalf of a class of others similarly
situated,

Plaintiff,

v.

Case No.: 19-CV-907

JURY TRIAL DEMANDED

ESSENTIA HEALTH

c/o TERRANCE R JACOBSON, Registered Agent
Legal Dept
3500 Tower Avenue
Superior, WI 54880

Defendant.

**PLAINTIFF'S MOTION FOR LEAVE TO SUPPLEMENT
HER OPPOSITION TO THE DEFENDANT'S MOTION TO DISMISS**

Plaintiff MARY HILLS ("HILLS" or "Plaintiff") seeks leave to submit the attached decision, *Smith v. Recordquest, LLC.*, 989 F.3d 513 (7th Cir. 2021), rendered by the Seventh Circuit Court of Appeals on February 26, 2021.

The holding bears on two issues raised by the Defendant in its motion to dismiss.

Statute of Limitations

In its motion to dismiss, Defendant asserted that the statute of limitations for claims under Wis. Stat. §146.83 and 146.84 was two years. *See* Dkt. 13, at pp. 12-14. Plaintiff argued that the statute of limitations was the longer 6-year period. *See* Dkt. 28, Opp. at pp. 16-21.

The 7th Circuit Court of Appeals confirmed that the statute of limitations is 6 years.

Unjust Enrichment

The Defendant also moved to dismiss Plaintiff's unjust enrichment claims. *See* Dkt. 13, at pp. 14-15.

The 7th Circuit held in *Recordquest* that Smith's unjust enrichment claim was barred as it was derivative of her Wis. Stat. §146.83 claim and she was not entitled to a "double recovery" 989 F.3d at 520. Respectfully, the unjust enrichment claims are not asserted to obtain a double recovery but as an alternative theory of recovery as allowed by Federal Rule 8(d)(2).

Dated this 29th day of March, 2021.

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CERTIFICATE OF SERVICE

A true and correct copy of this Motion for Leave was served on the Defendant's counsel when filed with the court through the Court's CM/ECF system on March 29, 2021.

/s/ Robert J. Welcenbach